

STATE OF MICHIGAN  
IN THE SUPREME COURT

MARK TODD TWICHEL, Personal Representative  
of the Estate of BRADY S. SIES, Deceased,

Plaintiff-Appellee,

Supreme Court Docket No: 121822  
Court of Appeals Docket No: 228363  
Lower Court Case No: 99-65692-NI

-vs-

MIC GENERAL INSURANCE CORPORATION,

Defendant-Appellant.

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**SUPPLEMENTAL BRIEF ON APPLICATION FOR LEAVE TO APPEAL OF  
DEFENDANT-APPELLANT MIC GENERAL INSURANCE CORPORATION  
PROOF OF SERVICE**

**FILED**

AUG 29 2003

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SIEMION, HUCKABAY, BODARY, PADILLA, MORGANTI & BOWERMAN, P.C.

121822

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**STATEMENT OF QUESTION INVOLVED**

1. **IS THE ESTATE BARRED FROM RECOVERY OF MICHIGAN PIP BENEFITS FROM MIC GENERAL, WHERE THE DECEDENT WAS THE OWNER AND OPERATOR OF AN UNINSURED MOTOR VEHICLE THAT WAS INVOLVED IN THE ACCIDENT?**

Defendant/Appellant answers this question "YES."

Plaintiff/Appellee answer this question "NO."

The Trial Court answered this question "NO."

The Court of Appeals answered this question "NO."

2. **IS THE ESTATE BARRED FROM RECOVERY OF UNINSURED MOTORIST BENEFITS FROM MIC GENERAL, WHERE THE DECEDENT WAS AN OWNER OF THE MOTOR VEHICLE THAT WAS INVOLVED IN THE ACCIDENT, AND THAT MOTOR VEHICLE WAS NOT LISTED IN THE MIC GENERAL POLICY?**

Defendant/Appellant answers this question "YES."

Plaintiff/Appellee answer this question "NO."

The Trial Court answered this question "NO."

The Court of Appeals answered this question "NO."

## STATEMENT OF FACTS

This Appellant incorporates by reference the Statement of Facts contained in its original Application for Leave to Appeal.

## ARGUMENT

### **THE DECEDENT WAS AN OWNER BECAUSE HE HAD THE “RIGHT TO EXCLUSIVE USE” OF THE PICK-UP TRUCK INVOLVED IN THE ACCIDENT FOR A PERIOD EXCEEDING THIRTY DAYS.**

SIEMION, HUCKABAY, BODARY, PADILLA, MORGANTI & BOWERMAN, P.C. The purpose of this brief is to address Plaintiff's argument regarding the case of Michigan Mutual v Reddig, 129 Mich App 631, 314 N.W.2d 847 (1983). In all other respects, this Appellant feels that its original Application for Leave to Appeal has adequately addressed the law applicable to this appeal, and the arguments raised in that Application are incorporated herein by reference. In particular, this Appellant has again reviewed the existing law in this area, and still concludes that the issues raised on this appeal remain as meritorious and compelling as they were when this Application was originally filed.

Contrary to what Appellee asserts, the Reddig case actually supports the position of MIC General, to the extent that it is relevant at all. In Reddig, the Court of Appeals addressed an interpretation of “owner” as used in an automobile insurance policy. The facts of the purchase of the vehicle in Reddig are comparable (though not identical) to the facts in this case, in that there was a personal transaction between two individuals for the purchase of the motor vehicle, less than the full purchase price had been paid, and that legal title had not been transferred yet to the purchaser prior to the accident.

There are two key distinctions between this case and Reddig. First of all, Reddig involved a prior version of MCLA § 257.37, defining “owner”, which definition was substantially revised in 1988 by 1988 Public Act No. 125. At the time Reddig was decided, MCLA § 257.37 stated as follows:

" 'Owner' means: (a) Any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

"(b) A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner."

In other words, the pertinent language of MCLA 257.37(c) ("immediate right of possession . . . under an installment sale contract") did not exist. Therefore, the court in Reddig had no need to decide the meaning of the phrase "installment sale contract."

Secondly, Reddig only expressly addressed the definition of owner stated in MCLA 257.37(b), as to who was the titled owner. The Plaintiff seems to be arguing that the Court of Appeals made an implicit ruling that "the vehicle had not been used exclusively for a period greater than 30 days." Quite the contrary, the court did not interpret the portion of the statute which defines an "owner" as anyone "having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days." This language is not quoted anywhere in the body of the opinion, and is only referenced, without comment or interpretation, in footnote one of the opinion. The opinion is barren of any indication that either of the parties relied on this language, either in the lower court or in the Court of Appeals. It rather clearly appears that the parties never raised this statutory language as an issue in the trial court of Court of Appeals. Moreover, the Court of Appeals opinion did not attempt to interpret this language. The reason, or reasons, why this issue was not raised may be a matter of speculation, but we certainly cannot conclude, as the Appellee does, that "the vehicle had not been used exclusively for a period greater than 30 days." Accordingly, "exclusive use" was a "non-issue"

in Reddig, but not for the reason suggested by the Appellee in the instant appeal. Rather, it was a non-issue because, unlike the instant case, for some unknown reason it was never raised as an issue by the parties.

Nonetheless, the fact that Appellee cites Reddig at all constitutes his implicit concession that the definition of owner contained in the Motor Vehicle Code should be read in pari materia with the definition of owner in the No-Fault Act. See State Farm v Sentry, 91 Mich App 109, 283 N.W.2d 661 (1979). This is precisely the position taken by this Appellant in its Application for Leave to Appeal.

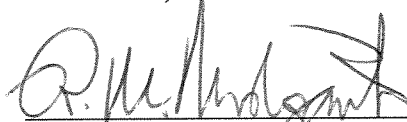
Accordingly, for the reasons discussed in Appellant's Application for Leave to Appeal, decedent Brady Sies was an owner of the pick-up truck involved in the accident because he had the "right to exclusive use" of the pick-up truck for a period exceeding thirty days. On this basis, the Appellees are barred from recovery of Michigan PIP benefits.



**RELIEF REQUESTED**

The Defendant/Appellant MIC General Insurance Corporation prays that this Court grant it leave to appeal from the order of summary disposition in favor of the Plaintiff/Appellee and denying Defendant's motion for summary disposition, and the May 31, 2002 opinion of the Court of Appeals affirming the order of summary disposition; in the alternative, Defendant/Appellant prays that this Court enter a peremptory order reversing the order of summary disposition in favor of the Plaintiff/Appellee, and remanding this matter to the trial court for entry of an order granting Defendant's Counter Motion for Summary Disposition as to the claims for Michigan PIP benefits and uninsured motorist benefits.

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